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SENATE, No. 2447

STATE OF NEW JERSEY
216th LEGISLATURE

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Sponsored by:

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District 4 (Camden and Gloucester)

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SYNOPSIS

Permits group self-insurance plans for, and collective bargaining agreements improving the provision of, workers' compensation.

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee on May 7, 2015, with amendments.



1 AN ACT concerning collective bargaining agreements and group
2 self-insurance plans for workers' compensation, amending
3 R.S.34:15-77, and supplementing chapter 15 of Title 34 of the
4 Revised Statutes.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. R.S.34:15-77 is amended to read as follows:

10 34:15-77. Any employer desiring to carry his own liability
11 insurance may make application to the Commissioner of Banking
12 and Insurance showing his financial ability to pay compensation.
13 The commissioner, if satisfied of the applicant's financial ability
14 and the permanence of his business, shall by written order exempt
15 the applicant from insuring the whole or any part of his
16 compensation liability.

17 The commissioner may from time to time require any employer
18 exempted as herein provided to furnish further statements of
19 financial ability and if at any time it appears to him that any such
20 employer is no longer financially able to carry the risk of
21 compensation liability the commissioner shall revoke his order
22 granting exemption, whereupon the employer shall immediately
23 insure his liability under this chapter in a mutual association or
24 other insurance company authorized to engage in workers'
25 compensation in this State.

26 Whenever the commissioner is not satisfied with the financial
27 ability and the permanence of the business of an employer
28 exempted as herein provided, or of a new applicant for exemption,
29 he may consider, and shall have the authority to accept, as evidence
30 of such ability to pay compensation, (a) a guaranty by the parent
31 corporation of such applicant that said parent corporation will
32 discharge the applicant's liability under this chapter; (b) a separate
33 account or reserve fund, or any deposit thereupon, maintained by an
34 applicant to discharge his liability under this chapter; (c) a surety
35 bond executed by an association or corporation licensed to do
36 business in this State, provided the surety on any such surety bond
37 undertakes to discharge the applicant's liability under this chapter;
38 or (d) a contract of an employer with an insurance carrier covering
39 liability for a portion of the compensation required under article 2,
40 chapter 15, Title 34 of the Revised Statutes.

41 Any employer or group of employers exempted as herein
42 provided may for its own protection insure its liability for the
43 payment of any stated loss in excess of \$100,000.00 by reason of
44 any single accident or by reason of occupational diseases scheduled
45 in this chapter; provided, that any such contract of insurance shall

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted May 7, 2015.

1 operate only between the employer or group of employers and its
2 insurance carrier and shall not be subject to any of the provisions of
3 this chapter.

4 An application pertaining only to a change of name of a
5 presently exempt employer, without any change in the financial
6 structure of said employer, shall not be considered as a new
7 application for exemption under this act.

8 Pursuant to rules and regulations established by the
9 Commissioner of Banking and Insurance, 10 or more employers
10 licensed by the State as hospitals under the "Health Care Facilities
11 Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.) may make
12 application to the commissioner for permission to enter into
13 agreements to pool their liabilities under this chapter for the
14 purpose of qualifying as self-insurers. An employer member of the
15 approved group shall be classified as a self-insurer.

16 Pursuant to the provisions of section 2 of P.L. , c. (C.)
17 (pending before the Legislature as this bill), a group of employers
18 who are participating in, or establishing, a Taft-Hartley trust fund,
19 as defined in subsection d. of that section, may apply to the
20 Commissioner of Banking and Insurance for approval to enter into
21 agreements to pool their liabilities under chapter 15 of Title 34 of
22 the Revised Statutes for the purpose of qualifying as members of a
23 group plan for self-insurance. An employer member of an approved
24 group plan shall be classified as a self-insurer and shall be subject
25 to all requirements, obligations and liabilities of that chapter
26 regarding an employer providing compensation by means of self-
27 insurance, including all obligations to make payments to the Second
28 Injury Fund, the New Jersey Self-Insurers Guaranty Association
29 and the uninsured employer's fund, and shall also be subject to the
30 provisions of section 7 of P.L. , c. (C.) (pending before the
31 Legislature as this bill).

32 A group of employers participating in a Taft-Hartley trust fund
33 may, in the alternative, meet their obligations to provide the
34 protection prescribed by this article by purchasing, as a group,
35 insurance from an insurance company or mutual association
36 pursuant to the provisions of R.S.34:15-78.

37 (cf: P.L.1983, c.376, s.1)

38

39 2. (New section) a. If a group of employers who, with the
40 union or unions representing their employees, are participating in,
41 or establishing, a Taft-Hartley trust fund applies to the
42 Commissioner of Banking and Insurance for approval to establish a
43 group plan for self-insurance to provide all compensation required
44 by chapter 15 of Title 34 of the Revised Statutes for the employees
45 of the employers who are members of the group, the group shall
46 present satisfactory proof to the Commissioner of Banking and
47 Insurance of its financial ability to pay that compensation, including
48 a statement of the group's revenues, their source and assurance for

1 their continuance. Under the group plan, the group shall assume the
2 liability of all the employers within the group under the terms of a
3 trust agreement approved by the Commissioner of Banking and
4 Insurance, and pay all compensation for which the employers are
5 liable under chapter 15 of Title 34 of the Revised Statutes. No
6 employer participating in the group plan shall be relieved from the
7 liability for the compensation except by the payment by the group
8 plan or by the employer. The insolvency or bankruptcy of a
9 participating employer shall not relieve the group self-insurer from
10 the payment of compensation for injuries or death sustained by an
11 employee during the time the employer was a participant in the
12 group plan.

13 b. A group plan for self-insurance for the payment of workers'
14 compensation by a Taft-Hartley trust fund shall be approved by the
15 Commissioner of Banking and Insurance if the group plan is
16 established by a collective bargaining agreement negotiated
17 between the group of employers and one or more unions that are
18 determined by the Commissioner of Labor and Workforce
19 Development to be the recognized or certified exclusive bargaining
20 representatives of the employees of the employers, and the
21 Commissioner of Banking and Insurance finds that the group plan
22 and the participating employers comply with all applicable
23 requirements of this section and with all requirements specified in
24 regulations adopted by the Commissioner of Banking and Insurance
25 regarding:

26 (1) The financial condition of the plan and the provisions of the
27 plan to ensure the payment of all required compensation;

28 (2) The reporting and disclosure of information and documents
29 regarding the plan and its finances, operations, officers, personnel
30 and member employers;

31 (3) The procedures for the addition or termination of employers
32 participating in the plan; and

33 (4) The deposit with the Commissioner of Banking and
34 Insurance, at the inception of the plan, of any types and amounts of
35 securities or surety bonds as the Commissioner of Banking and
36 Insurance deems necessary to ensure the payment of all required
37 compensation.

38 c. The Commissioner of Banking and Insurance may conduct
39 an annual examination of each group self-insurer as he deems
40 necessary and may deny the application of any group of self-
41 insurers to operate a group plan, or revoke approval of a group plan,
42 for good cause shown, including:

43 (1) Failure to comply with the requirements set out in
44 regulations adopted by the Commissioner of Banking and Insurance
45 or with any provision of this section or R.S.34:15-77;

46 (2) Failure to comply with a lawful order of the Commissioner
47 of Banking and Insurance; or

1 (3) Deterioration of financial condition to such an extent that
2 such deterioration would have an adverse effect on the ability of the
3 self-insurance group to pay expected losses.

4 The Commissioner of Banking and Insurance shall provide to the
5 group self-insurer or applicant for group self-insurance a written
6 explanation of the reasons for any denial or revocation and an
7 opportunity to appeal the denial or revocation.

8 d. For the purposes of this section, "Taft-Hartley trust fund"
9 means a labor-management, jointly-administered, worker benefit
10 trust fund formed pursuant to a collectively bargained agreement in
11 compliance with the provisions of paragraph (5) of subsection (c) of
12 section 302 of the "Labor Management Relations Act, 1947," 29
13 U.S.C. s.186(c)(5), between one or more employers and one or
14 more unions that are determined by the Commissioner of Labor and
15 Workforce Development to be the recognized or certified exclusive
16 bargaining representatives of the employees of those employers.

17 e. The Commissioner of Banking and Insurance shall, in
18 consultation with the Commissioner of Labor and Workforce
19 Development, adopt all rules and regulations necessary or useful to
20 effectuate the provisions of this section regarding the recognition,
21 approval, oversight and revocation of approval of a group plan,
22 including any fee schedules that the Commissioner of Banking and
23 Insurance deems necessary to reimburse the Department of Banking
24 and Insurance to carry out its responsibilities pursuant to this
25 section.

26
27 3. (New section) Upon approval by the Commissioner of Labor
28 and Workforce Development pursuant to section 4 of P.L. ,
29 c. (C.) (pending before the Legislature as this bill), the
30 commissioner, each judge of compensation, and any court shall
31 recognize as valid and binding any provisions of any collective
32 bargaining agreement between an employer or a group of
33 employers, including a group of employers that has established an
34 approved plan of group self-insurance pursuant to section 2 of P.L. ,
35 c. (C.) (pending before the Legislature as this bill), and one or
36 more unions that are determined by the commissioner to be the
37 recognized or certified exclusive bargaining representatives of the
38 employees of the employers, to establish obligations and procedures
39 relating to workers' compensation to provide for any or all of the
40 following:

41 a. The use, notwithstanding any other provisions of chapter 15
42 of Title 34 of the Revised Statutes regarding the selection of
43 providers of medical treatment, of a list or network, agreed upon by
44 the employers and the unions, of providers of medical treatment that
45 are the exclusive source of all medical and related treatment
46 provided pursuant to that chapter, and the agreement may, if agreed
47 by the employers and the unions, provide an option for the use of

1 qualified providers outside of the network or list in emergencies
2 during which providers on the network or list are not available;

3 b. The use, notwithstanding any other provisions of chapter 15
4 of Title 34 of the Revised Statutes regarding the selection of
5 providers of medical evaluation, of a list or network, agreed upon
6 by the employers and the unions, of qualified medical evaluators
7 that are the exclusive source of medical evaluations provided
8 pursuant to that chapter;

9 c. The use, notwithstanding any other provisions of chapter 15
10 of Title 34 of the Revised Statutes regarding the selection of
11 providers of vocational rehabilitation and retraining services, of a
12 list or network, agreed upon by the employers and the unions, of
13 providers of vocational rehabilitation and retraining services that
14 are the exclusive source of vocational rehabilitation and retraining
15 services for injuries compensable under that chapter;

16 d. With respect to employees who are provided group health
17 benefits or temporary disability benefits for non-occupational injury
18 and illness by employers, the coordination or integration of the
19 delivery, funding, or both funding and delivery, of compensation
20 provided under chapter 15 of Title 34 of the Revised Statutes with
21 group health benefits or non-occupational temporary disability
22 benefits, including arrangements for the use of lists or networks of
23 medical providers agreed upon by the employers and the unions, for
24 both occupational and non-occupational medical treatment;

25 e. Benefits supplemental to those provided under chapter 15 of
26 Title 34 of the Revised Statutes or under the "Temporary Disability
27 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);

28 f. The establishment of joint labor-management occupational
29 safety and health committees; and

30 g. The creation or promotion of a light-duty or transitional
31 return-to-work program.

32 If the unions and employers have established a Taft-Hartley trust
33 fund as defined in subsection d. of section 2 of P.L. , c. (C.)
34 (pending before the Legislature as this bill), the providers of
35 medical treatment, medical evaluations, or vocational rehabilitation
36 and retraining services to be included in any network or list agreed
37 to pursuant to this section may be selected by the trustees of the
38 Taft-Hartley trust fund.

39

40 4. (New section) a. Any one or more unions that are the
41 recognized or certified exclusive bargaining representatives of the
42 affected employees may file with the Commissioner of Labor and
43 Workforce Development a petition seeking authorization to
44 negotiate an agreement with one or more employers pursuant to
45 section 3 of P.L. , c. (C.)(pending before the Legislature as
46 this bill). The petition shall include the proof required by the
47 commissioner that the unions are the recognized or certified
48 exclusive bargaining representatives for the employees subject to

1 the agreement, specify the bargaining unit or units to be included
2 and the names of the unions and employers, and be accompanied by
3 a copy of any current applicable collective bargaining agreement.
4 Upon verification that the petitioners are the exclusive bargaining
5 representatives and that the petition satisfies all applicable
6 requirements of this section, the commissioner shall notify the
7 employers and unions that they are authorized to enter into the
8 negotiations. Upon the completion of the negotiations, a copy of
9 the negotiated agreement, identifying the employer or the group of
10 employers and the union or unions, shall be filed with the
11 commissioner. Within 21 days of receipt of an agreement, the
12 commissioner shall review the agreement for compliance with the
13 provisions of chapter 15 of Title 34 of the Revised Statutes and
14 section 3 of P.L. , c. (C.) (pending before the Legislature as
15 this bill), and either approve the agreement or deny approval and
16 notify the parties of any additional information required or any
17 modification of the agreement determined by the commissioner to
18 be necessary to bring the agreement into compliance with the
19 provisions of this act and obtain approval.

20 b. If the employer is insured under chapter 15 of Title 34 of the
21 Revised Statutes it shall obtain consent from its insurance carrier to
22 enter into an agreement as provided in section 3 of P.L. ,
23 c. (C.)(pending before the Legislature as this bill), unless the
24 employer obtains insurance from a different carrier or participates
25 in a group plan for self-insurance pursuant to section 2 of
26 P.L. , c. (C.)(pending before the Legislature as this bill).
27

28 5. (New section) Nothing in P.L. , c. (C.) (pending
29 before the Legislature as this bill), shall be construed as permitting
30 any provision of ¹a collective bargaining agreement entered into
31 pursuant to section 3 of this act, of¹ an agreement or group plan
32 ¹subject to the provisions of this act¹ for self-insurance ¹~~that~~¹, or
33 ¹of an¹ arrangement for a group purchase of insurance ¹under the
34 provisions of this act¹, that:

35 a. Diminishes any employee's entitlement to full payment by
36 the employer for all compensation required by chapter 15 of Title
37 34 of the Revised Statutes, including benefits for temporary
38 disability or total or partial disability, medical treatment and
39 rehabilitation services, and benefits for dependents and survivors;

40 b. Diminishes any employee's entitlement to temporary
41 disability benefits pursuant to the "Temporary Disability Benefits
42 Law," P.L.1948, c.110 (C.43:21-25 et al.) or increases to any degree
43 costs to the employee of temporary disability benefits; or

44 c. Supersedes or diminishes any employee's ¹or employer's¹
45 rights under any provision of chapter 15 of Title 34 of the Revised
46 Statutes, including, but not limited to, all rights ¹of an employee or
47 employer¹ to obtain resolution of disputed claims by the Division of

1 Workers' Compensation, all rights provided by R.S.34:15-15 ¹to an
2 employee¹ to secure treatment and services refused by an employer,
3 including an employer who is a member of a group, all rights ¹of an
4 employee or employer¹ to representation by an attorney at any stage
5 of the resolution of any aspect of a workers' compensation claim,
6 and all rights ¹of an employee or employer¹ to have attorney,
7 witness and other fees paid as provided by chapter 15 of Title 34 of
8 the Revised Statutes.

9 Any portion of any ¹collective bargaining agreement or¹
10 agreement or group plan for self-insurance, or arrangement for a
11 group purchase of insurance, that violates any provision of this
12 section is null and void. Each ¹employer and¹ employee shall be
13 notified of the protections of rights provided by this section upon
14 first becoming subject to the agreement ¹or,¹ plan¹, or
15 arrangement¹ and upon ¹the occurrence of¹ any injury compensable
16 under the agreement ¹or,¹ plan¹, or arrangement¹.
17

18 6. (New section) Commencing on July 1, 2016, and annually
19 thereafter, the Commissioner of Labor and Workforce Development
20 shall provide to the Governor and the Legislature, and make public,
21 an annual report on agreements approved pursuant to section 4 of
22 P.L. , c. (C.) (pending before the Legislature as this bill),
23 which shall include aggregate data on the following:

24 a. The number of employers and employees, work hours and
25 payroll covered by the agreements;

26 b. The projected incurred costs and actual costs of claims under
27 the agreements;

28 c. Any occupational safety and health activities under the
29 agreements and their impact;

30 d. The numbers of employers and employees participating in
31 vocational rehabilitation and light-duty programs under the
32 agreements;

33 e. The numbers of employers and employees participating in
34 programs to coordinate or integrate benefits for occupational and
35 non-occupational injury and illness; and

36 f. The numbers of employers and workers participating in
37 programs under the agreements of joint labor-management selection
38 of medical providers, medical evaluators, or rehabilitation
39 providers.

40 In addition, the annual report may include comparisons between
41 the aggregate data for participating employers and the aggregate
42 data for other employers with respect to claims, disputes, costs and
43 other aspects of workers' compensation.

44 The data obtained by the commissioner for the preparation of the
45 annual report shall be confidential and not subject to public
46 disclosure under any law of this State, except for information
47 disclosed in the report in a manner which is not identifiable with

1 any individual employee or employer, and except that the
2 commissioner shall make public a current list of employers and
3 unions entering into agreements approved pursuant to section 4 of
4 this act.

5
6 7. (New section) The Commissioner of Labor and Workforce
7 Development, in consultation with the Commissioner of Banking
8 and Insurance, shall adopt all rules and regulations deemed
9 necessary or useful by the commissioner to effectuate the provisions
10 of sections 3 through 6 of P.L. , c. (C.) (pending before the
11 Legislature as this bill) regarding the authorization, approval and
12 oversight of agreements negotiated pursuant to section 3 of P.L. ,
13 c. (C.) (pending before the Legislature as this bill), including
14 any requirements deemed appropriate by the commissioner
15 regarding the obtaining and retaining of records or information on
16 programs under the agreements.

17
18 8. This act shall take effect on the 120th day following
19 enactment.